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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,424	03/21/2001	John L. Blair	BLAIR 3-5-5-3	2399
47396	7590	02/04/2005	EXAMINER	
HITT GAINES, PC AGERE SYSTEMS INC. PO BOX 832570 RICHARDSON, TX 75083				CRAVER, CHARLES R
		ART UNIT		PAPER NUMBER
		2682		

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/813,424	BLAIR ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Charles R Craver	2682

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires 6 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached action.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments filed 10-8-04 have been fully considered but they are not persuasive.

Regarding claims 1-7, 8-14 and 15-21 under *Thomas et al*, the examiner upholds the rejection of record. Given that *Thomas* discloses the choosing of one channel over another based on quality, such would inherently perform the transmission rate modification as the examiner continues to read such as an intended use limitation. The invention of *Thomas* provides the apparatus of e.g. claim 1, and as such would perform such a task the same as the instant claimed invention would. As to claim 2, *Thomas* discloses the characteristic may be signal quality, associated with signal power (energy, col 10 lines 9-19). As to claim 3, the examiner reads the RF network of *Thomas* as a local-area network.

Regarding claims 22-32 under *Robinson et al*, the examiner upholds the rejection of record. The applicant asserts that *Robinson* fails to disclose a priority for data, however *Robinson* discloses such in col 4 lines 24-57, specifically stating that while the priority may be that of a specific terminal, it may also be priority for a specific service, which is read as a priority for that service's communications, i.e. data. Such is stated by *Robinson*; "In relation to any reduction of bandwidth provided to a unit, services of greater importance to that unit (e.g. services essential to the relay of information) are maintained above ancillary services that are complementary to the relay of information, i.e. the bandwidth required to support a voice communication is substantially less than

the bandwidth required to support video conferencing while the essential information is predominantly contained within the voice communication," col 4 lines 46-55.

***Conclusion***

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 872-9306 for both formal and informal/draft communications, labeled as such.

Hand delivered responses should be brought to Crystal Plaza II, 200 South 20<sup>th</sup> St, Arlington VA, first floor.

Any inquiry concerning this or earlier communications from the examiner should be directed to examiner Charles Craver at (703) 305-3965.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vivian Chin, can be reached at (703) 308-6739.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at (703) 305-4700.

CC

C.Craver

January 30, 2005

*CC* 1/30/05  
CHARLES CRAVER  
PRIMARY EXAMINER